

Applicants note that 37 CFR § 1.83 (MPEP 608.02(d)) states that the drawing in a nonprovisional application must show every feature of the invention specified in the claims. Applicants do not claim a plastic over-cap in their claims. Plastic is disclosed in the specification as a preferred material of use for the over-cap.

In the packaging arts, the use of plastic is not essential. Rather, it is a conventional feature that persons of skill in the art well know to use for food, liquid and snack-bearing packages. Also, Applicants do not limit their use to plastic. In the specification, Applicants clearly point out that the over-cap may be formed from any suitable material.<sup>1</sup> The word "any" contemplates materials beyond plastic.

Applicants believe that the Examiner's specified amendments to the drawings are inappropriate at this time and therefore request reconsideration and allowance of the Drawings.

#### Objection to the Title to the Specification

The Examiner has objected to the Title of the Specification. The Examiner states that the title to the invention is not descriptive. Without citing the MPEP, a patent rule (i.e., 37 CFR), a statute or case law, the Examiner states that the "title should include at least one technical or inventive feature of the claimed instant invention."

Applicants respectfully disagree with the Examiner. The title of the invention is the following: **SUBSTANTIALLY TRIANGULAR-SHAPED OVER-CAP**. Figures 1, 6 and 10 of Applicants' specification, in fact, show the substantially triangular-shaped over-cap. Also, the specification is replete with discussion and detailed explanation about Applicants' substantially triangular shaped over cap; e.g., "The over-caps according to the present invention are substantially triangular-shaped and are adapted to cover a similarly substantially triangular-shaped end (e.g., an open or closed end) of a container."<sup>2</sup> Lastly, Applicants claims, and specifically Claim 1, claim a "substantially triangular-shaped cap."<sup>3</sup>

Thus, Applicants' contend that in view of Applicants' figures, written specification, and claims, one of skill in the art would find Applicants' title sufficiently descriptive of the subject matter contained in the specification. Applicants further contend that the Examiner's requirement of "at least one technical or inventive feature" in the title is not one mentioned or required by the MPEP, 35 USC, 37 CFR or case law.

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<sup>1</sup> Applicants' Specification at page 14, lines 28-29: "The over-cap according to the invention may be formed of any suitable material and according to any manufacturing process known in the art."

<sup>2</sup> Id. at page 4, lines 27-29.

<sup>3</sup> Id. at page 17, lines 2-8.

As such, Applicants respectfully request reconsideration and allowance of Applicants' Title over the Examiner's objection.

35 U.S.C. § 112 Rejection

Claims 1-15 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Specifically, the Examiner states that there is insufficient antecedent basis for the following phrase: i.e., "the total length of all of the inner extensions" in line 6 of Claim 1.

Applicants have amended Claim 1 to provide the proper antecedent basis. No new matter has been added. Support for the amendments to Claims 1 can be found in the specification at page 6, lines 8-13.

Applicants therefore respectfully request reconsideration and allowance of Claims 1-15 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

35 U.S.C. § 103 Rejection

Claims 1-6, 9 and 12-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud, et al. (U.S. Patent No. 4,742,934).

The Examiner states that Michaud '934 teaches the claimed over-cap except, for the length of at least one inner extension about the perimeter of the over-cap (i.e., "only that the extensions [of Michaud '934] are at the corners of the perimeter--or an intersection of points bounding the at least one extension."

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. (MPEP § 2142).

Applicants respectfully disagree that Michaud '934 teaches or suggests Applicants over-cap as claimed. Applicants have amended Claim 1 to provide clarity regarding the structure of the over-cap. Namely, Applicants have amended Claim 1 to provide that the skirt attached to the over-cap extends substantially continuously about the perimeter of the over-cap. In contrast, Michaud '934 teaches away from this substantially continuous extension: "lid segment 38 loosely overlies both outer wall 28 and sealing lip 30 of tray segment 20 except in corner areas A

or the various points of intersection of the sidewalls of container lid 12 and container tray 10.”<sup>4</sup> [Emphasis added.] Clearly, Michaud’s intention was to provide an embodiment that contemplated only a small skirt area along the un-curved periphery of their lid.

Applicants’ skirt provides important utility to their over-cap. For example, the skirt helps to provide rigidity and strength to the over-cap.<sup>5</sup> Also, the skirt’s configuration creates a gap distance that enables finger insertion beneath the over-cap to pull the over-cap from the package.<sup>6</sup> Lastly, the skirt works to enhance many functional aspects of the over-cap.<sup>7</sup>

In light of Michaud’s teaching away and the important utility of Applicants’ substantially, continuous skirt, Applicants therefore respectfully request reconsideration and allowance of Claims 1-6, 9 and 12-20 over the Examiner’s 35 U.S.C. § 103(a) rejection.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud ‘934 in view of Terauds (U.S. Patent No. 4,535,889). The Examiner states that Terauds ‘889 teaches a plurality of inner extensions on a skirt wall.

Applicants respectfully disagree that Michaud ‘934 in view of Terauds ‘889 teaches Applicants’ invention. As mentioned above, it is Applicants contention that Michaud ‘934 teaches away from Applicants’ invention because Michaud ‘934 does not teach a substantially continuous skirt about the periphery of their lid. The addition of Terauds ‘889 does not cure this flaw since Terauds ‘889 also teaches away from Applicants’ skirt. Terauds ‘889 neither has a skirt or a feature that could be taken as Applicants’ substantially continuous skirt; note Terauds’ thumb notch recess 80 about dome lid D.<sup>8</sup>

In view of the reasons set forth above, Applicants contend that the combination of Michaud ‘934 in view of Terauds ‘889 does not meet Applicants’ invention. Therefore, Applicants respectfully request reconsideration and allowance of Claims 7 and 8 over the Examiner’s 35 U.S.C. § 103(a) rejection.

Claims 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Michaud ‘934 in view of Blanchard (U.S. Patent No. 4,026,459).

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<sup>4</sup> Michaud, et al. (U.S. Patent No. 4,742,934): col. 4, lines 62-66.

<sup>5</sup> Applicants’ Specification at page 6, lines 1-2.

<sup>6</sup> Id. at page 13, lines 28-29.

<sup>7</sup> Id. at page 13, lines 32-33.

<sup>8</sup> Terauds (U.S. Patent No. 4,535,889) at col. 8, lines 29-49.

Applicants respectfully disagree that Michaud '934 in view of Blanchard '459 teaches Applicants' invention. As mentioned above, it is Applicants contention that Michaud '934 teaches away from Applicants' invention because Michaud '934 does not teach a substantially continuous skirt about the periphery of their lid. The addition of Blanchard '459 does not cure this flaw in Michaud '934 because as noted above, Michaud '934 clearly teaches away from Applicants' skirt. Because of this teaching away, the combination of Michaud '934 in view of Blanchard '889 does not meet Applicants' invention.

Applicants therefore respectfully request reconsideration and allowance of Claims 10 and 11 over the Examiner's 35 U.S.C. § 103(a) rejeciton.

#### SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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**MARKED COPY OF THE CLAIMS**

1. (Amended) A substantially triangular-shaped over-cap, comprising:
  - a) a body having a substantially triangular-shaped perimeter with three perimeter corners and three perimeter sides, the body further having an area; and
  - b) a skirt extending substantially continuously about the substantially triangular shaped perimeter, the skirt including a skirt corner extending substantially downwardly from one of the perimeter corners, the skirt corner including at least one inner extension extending toward [an] the area adjacent to the body, wherein the total length of all of the inner extensions in combination is less than about 70 percent of the total length of the perimeter.